

issued with regard to Petitioner's first Medicaid application which upheld Morris County's denial of Medicaid benefits. That matter was not appealed and is not the subject of the current hearing.¹ The current matter concerns the transfer of assets to Petitioner's minor children.

Petitioner is 55 years-old and suffers from a degenerative brain disorder due to alcoholism. On or about March 23, 2019, he was admitted to a nursing facility. Petitioner's first and second Medicaid applications were filed on March 23, 2019 and March 23, 2021 respectively. In or around November 2019, Petitioner established a family trust. On April 9, 2021, the Superior Court entered an order granting Petitioner's request to reform the family trust and enable the Petitioner to divide the assets of the trust into thirds: (1) one third to Petitioner's guardian and debt to the nursing facility; (2) one-third to a trust established for the benefits of one son in compliance with N.J.S.A. 3B:12-54.1; (3) one-third to a trust established for the benefit of another son in compliance with N.J.S.A. 3B:12-54.1.

Petitioner contends that these other trusts were set up in an effort to ensure Petitioner "would be able to meet his obligations for child support and other payments pursuant to the Marital Settlement Agreement, as well as qualify him for Medicaid benefits." (R-6: Statement of Reasons p. 1).

In determining Medicaid eligibility for someone seeking institutionalized benefits, the counties must review five years of financial history. Under the regulations, "[i]f an individual . . . (including any person acting with power of attorney or as a guardian for such individual) has sold, given away, or otherwise transferred any assets (including any interest in an asset or future rights to an asset) within the look-back period" a transfer penalty of ineligibility is assessed.² N.J.A.C. 10:71-4.10 (c). It is Petitioner's burden to overcome the presumption that the transfer was done – even in part – to establish Medicaid eligibility. The presumption

¹ The Initial Decision incorrectly identifies the instant matter as "On Remand," and incorporates by reference findings of fact with regard to the prior decision, *W.F. v. Morris County Department of Family Services*, HMA 02310-21.

² Congress understands that applicants and their families contemplate positioning assets to achieve Medicaid benefits long before ever applying. To that end, Congress extended the look back period from three years to five years. Deficit Reduction Act of 2005, P.L. 109-171, § 6011 (Feb. 8, 2006).

that the transfer of assets was done to qualify for Medicaid benefits may be rebutted “by presenting convincing evidence that the assets were transferred exclusively (that is, solely) for some other purpose.” N.J.A.C. 10:71-4.10(j). The regulations also provide that, “if the applicant had some other purpose for transferring the asset, but establishing Medicaid eligibility appears to have been a factor in his or her decision to transfer, the presumption shall not be considered successfully rebutted.” N.J.A.C. 10:71-4.10(i)2.

The Initial Decision held that the reformation of Petitioner’s family trust into a self-settled personal needs trust such that the funds would be divided among Petitioner’s creditors and children was not an effort to expedite his Medicaid eligibility. In doing so, the court relies on a Statement of Reasons which references a marital settlement agreement obligating Petitioner to pay annual child support of \$23,400 in addition to half of each child’s college tuition. The same statement of reasons goes on to say that “In an effort to ensure [Petitioner] would be able to meet his obligations for child support and other payments pursuant to the Marital Statement Agreement, as well as qualify him for Medicaid benefits, [Petitioner] sought court approval to transfer [Petitioner’s] assets to a trust...”³ (R-6)

Pursuant to N.J.A.C. 10:71-4.10 the application of transfer penalty will not apply when

1. The assets were transferred to a trust established for the sole benefit of an individual under 65 years of age who is disabled as defined by the Social Security Administration;
2. The assets were transferred to the individual's spouse or to another for the sole benefit of the individual's spouse;
3. The assets were transferred from the individual's spouse to another for the sole benefit of the individual's spouse (see N.J.A.C. 10:71-4.10(b) 7);
4. The assets were transferred to the community spouse subsequent to the application for Medicaid in accordance with N.J.A.C. 10:71-4.8(a)3;
5. The assets were transferred from the individual or individual's spouse to the individual's child who is blind or permanently and totally disabled.
 - i. In the event that the child does not have a determination from the Social Security Administration of blindness or disability, the blindness or disability will be evaluated by the Disability Review Unit of the Division of Medical Assistance and Health Services in accordance with the provisions of N.J.A.C. 10:71-3.13; or

³ Neither the Marital Settlement Agreement nor Child Support calculations is part of the record. These documents, along with additional court filings are part of the OAL file with no indication that they were introduced as exhibits or offered as evidence. Presumably, these filings are the basis for the court’s April 9, 2021 order and Statement of Reasons. Among these documents is a December 3, 2020 letter to the Honorable Martiza Berdote-Byrne, P.J. Ch., wherein Petitioner’s guardian states that the 2019 motion was brought, in part, to “immediately qualify for Medicaid benefits.”

6. A satisfactory showing is made, to the State that:
- i. The individual intended to dispose of the assets at either fair market value or for other valuable consideration;
 - ii. The assets were transferred exclusively for a purpose other than to qualify for medical assistance; or
 - iii. All assets transferred for less than fair market value have been returned to the individual.

Petitioner's lump sum transfer of assets to his children does not fall within the enumerated exceptions. Child support is a future obligation that would more appropriately be considered a post-eligibility income deduction.⁴ Petitioner's structured lump sum payout to his children, guardian and nursing facility was an effort to expedite his eligibility for Medicaid benefits.

THEREFORE, it is on this 29th day of NOVEMBER 2022,

ORDERED:

That the Initial Decision is hereby REVERSED; and

That the transfer penalty is upheld.



Jennifer Langer Jacobs, Assistant Commissioner
Division of Medical Assistance
and Health Services

⁴ Child support obligations are subject to modifications due to a change in circumstance or income. N.J.S.A. 2A:34-23; N.J.S.A. 5:6A